

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
proposed amendment of ARM) ON PROPOSED AMENDMENT
10.16.3010 relating to)
special education)

TO: All Concerned Persons

1. On October 4, 2005 at 9:00 a.m. a public hearing will be held in the conference room of the OPI building at 1300 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rule relating to special education.

2. The State Superintendent will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Superintendent's office no later than 5:00 p.m. on September 21, 2005 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893, e-mail: bemarlow@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD AGED THREE THROUGH FIVE HAVING A DEVELOPMENTAL DELAY WITH DISABILITIES AGES 3-5 (1) A student may be identified as ~~being a child with disabilities, without the specific category being identified,~~ having a developmental delay if the student is:

(a) 3 three, 4 four, or 5 five years old; and

~~(b) meets the criteria for one or more disabilities in ARM 10.16.3011 through 10.16.3022.~~

~~(2) At the discretion of the local educational agency, a student may be identified as being a child with disabilities if the student experiences a severe delay in development. A severe delay in development means:~~

~~(a) the student functions at a developmental level two or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in two or more areas of development; and~~

~~(b) the areas of development include one or more of the following areas:~~

(i) cognitive development; i

(ii) physical development; i

(iii) communication development; i

(iv) social and emotional development; i or

(v) adaptive functioning skills.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, MCA

4. Statement of Reasonable Necessity: The State Superintendent is proposing amendments to this rule to ensure consistency with 20-7-402, MCA and the provisions of the Individuals with Disabilities Education Act (IDEA). Statutory provisions and regulations under IDEA provide that a child with disabilities may be identified under the category of "developmental delay" or, when appropriate, in any other category of disability identified in IDEA. The term, "child with disabilities," has one meaning under ARM 10.16.3010 and a very different definition under 20-7-402, MCA. Under 20-7-402, MCA "child with disabilities" means a child evaluated in accordance with the regulations of the IDEA as having a disability, while under ARM 10.16.3010 it means only some of those children, e.g., only those between the ages of 3 through 5 inclusive. In addition, the term "child with disabilities" is not recognized as a specific category of disability in IDEA. Therefore, the term "child with disabilities" as currently contained in ARM 10.16.3010 is inconsistent with IDEA. In order to comply with the intent of 20-7-402, MCA, amendments are necessary to the rule to align ARM language with IDEA.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@mt.gov and must be received no later than 5:00 p.m. on October 6, 2005.

6. Catherine K. Warhank, OPI Chief Legal Counsel has been designated to preside over and conduct the hearing.

7. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch
Linda McCulloch
State Superintendent
of Public Instruction

/s/ Catherine K. Warhank
Catherine K. Warhank
Rule Reviewer

Certified to the Secretary of State August 29, 2005.